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No. 86-834

In The

Supreme Court of the United States

October Term, 1986

NEW JERSEY DISTRICT COURT ASS'N, INC., JACK SPAETH, SR., JACK SPAETH, JR., R. EUGENE GLAB, SHARON L. CHERIN AND WAYNE VANDERHOOF,

Petitioners,

v.

NEW JERSEY SUPREME COURT and ROBERT D. LIPSCHER, Administrative Director of the Courts,

Respondents.

On Petition for a Writ of Certiorari to the Appellate Division of the Superior Court of New Jersey

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether rules promulgated by the Supreme Court of New Jersey authorizing the commencement of civil actions by service of process with simultaneous certified and regular mail contravenes the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States?

2. Does the Fourteenth Amendment to the United States Constitution require that individuals be afforded an opportunity to be heard before they are terminated as officers of the courts of New Jersey when the individuals serve at the pleasure of the County Assignment Judge and therefore have no property interest in continued employment under state law?

3. Whether the Supreme Court of the United States has jurisdiction to entertain a claim that a state court erroneously interpreted and applied state constitutional law?

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N.J. Constitution (1947) *Art.* VI, § 2, par. 3

> The Supreme Court shall make rules governing the administration of all courts in the State, and, subject to law, the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

N.J. Court Rule 1:33-4 (a) to (e)

> (a) The Assignment Judge shall be the chief judicial officer within the vicinage and shall have plenary responsibility for the administration of the courts therein, subject to the direction of the Chief Justice and by rule of the Supreme Court. He shall be responsible for the implementation and enforcement of the rules, policies and directives of the Supreme Court, the Chief Justice and the Administrative Director.
>
> (b) The Assignment Judge shall be the authorized representative of the Chief Justice for the efficient and economic management of all courts within the vicinage. His responsibilities also shall include all such matters affecting county and municipal governments, including but not limited to budgets, personnel, and facilities.
>
> (c) The Assignment Judge shall be responsible for the supervision and efficient management of all courts matters filed in the vicinage and for the supervision, superintendence and allocation of all judges and personnel having a judicial support function within the vicinage.
>
> (d) The Assignment Judge shall have full responsibility for the administration of all court units within the vicinage, including those of the Surrogate and the Deputy Clerk of the Superior Court.
>
> (e) Subject to uniform minimum standards and conditions promulgated by the Administrative Director,

the Assignment Judge may appoint and discharge such judicial support personnel within the vicinage as he shall deem necessary.

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COUNTERSTATEMENT OF FACTS

This matter is before the Court on a petition by the New Jersey District Court Association, Inc., Jack Spaeth, Sr., Jack Spaeth, Jr., R. Eugene Glab, Sharon L. Chernin and Wayne Vanderhoof (petitioners), for a writ of certiorari to the Appellate Division of the Superior Court of New Jersey to review the decision entered by that Court on January 2, 1986 affirming a judgment entered in this action in favor of the respondents, Supreme Court of New Jersey and Robert D. Lipscher, Administrative Director of New Jersey's courts, by the Law Division of the Superior Court of New Jersey (Pa5 to Pa6).* In an opinion dated June 5, 1985, the Law Division rejected petitioners' challenge, on state law and federal constitutional grounds, to orders of the Supreme Court of New Jersey authorizing service of process by simultaneous certified and regular mail for certain civil actions commenced in the New Jersey courts (Pa9 to Pa19). The trial court also rejected the assertions of petitioners Jack Spaeth, Sr., Jack Spaeth, Jr., and R. Eugene Glab that the United States Constitution required that they be given an opportunity to be heard prior to their termination as officers of the New Jersey

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* "Pa" refers to the appendix to the Petition for a Writ of Certiorari. "Pb" refers to the brief in support of the Petition.

courts. Final judgment was entered accordingly (Pa7 to Pa8), and the Appellate Division affirmed (Pa5 to Pa6). The Supreme Court of New Jersey refused to certify the matter for review (Pa3 to Pa4), and dismissed the petitioners' appeal (Pa1 to Pa2).

The January 4, 1985 and February 20, 1985 orders of the Supreme Court of New Jersey that are challenged in this case provide for the expanded use of mail service for actions commenced in the Special Civil Part within the Law Division of the Superior Court of New Jersey (Pa20 to Pa22). The Special Civil Part, established in each of the State's 21 counties by order of the New Jersey Supreme Court effective December 31, 1983, exercises the jurisdiction previously exercised by the County District Courts. The County District Courts were statutory courts abolished by an act of the State Legislature enacted in 1983 after the New Jersey voters approved amendments to the State Constitution authorizing the abolition of the County District Courts and the transfer of the jurisdiction of these Courts to the Superior Court. *L.* 1983, *c.* 405. The jurisdiction of the Special Civil Part includes actions where the amount in controversy does not exceed $5,000, landlord/tenant matters and small claims cases. The expanded use of service by mail followed the Supreme Court's consideration of the results of pilot programs conducted since 1981 to test the effectiveness of mail service in the County District Courts, and later, in the Special Civil Part.

In April 1981, the New Jersey Supreme Court authorized the service of initial process by simultaneous certified and regular mail for all civil actions, other than small claims and landlord/tenant matters, in the Passaic County

District Court (Ra2).* The Administrative Office of New Jersey's courts compared the results of the two month project with personal service in the Passaic County District Court during another two month period (Ra20 to Ra 29). It was concluded that service by mail was more effective and could be achieved more quickly than personal service by sergeants-at-arms (Ra27). In March 1982, the Chief Justice of the Supreme Court formed a Task Force on Service of Process in the County District Courts. The Task Force issued a report in which it noted that it had reviewed the "favorable results" of the Passaic County service by mail project and recommended that there be further experimentation with primary mail service in selected counties (Ra40 to Ra70).

In response to the report of the Task Force, the Supreme Court ordered the implementation of experimental service by mail projects in the County District Courts for Burlington and Monmouth Counties. The Burlington County project commenced on January 1, 1983 and summonses in a designated percentage of civil actions, landlord/tenant matters and small claims cases were permitted to be served by simultaneous certified and ordinary mail (Ra30). The Monmouth County project commenced on June 1, 1983 and mail service was permitted for all small claims cases (Ra4).

In December 1983, the Administrative Office of the Courts issued a report on the Burlington project which in-

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* "Ra" refers to the appendix filed by the respondents in the Appellate Division of Superior Court. "Aa" refers to the appendix filed by the petitioners in that Court.

dicated that a greater percentage of defendants in civil actions and in small claims matters were served by mail than by personal service (Ra33). Service by mail was accomplished faster than personal service.* Similar conclusions were reached concerning the Monmouth project. In April 1984, the Clerk of the Special Civil Part reported that service by mail was faster than personal service and a greater percentage of defendants were successfully served by mail than those served personally (Ra37 to Ra 38).

On January 4, 1985, the Supreme Court ordered that service by mail projects be instituted on or after February 1, 1985 in fourteen additional counties with the Burlington and Monmouth County projects continued (Pa20 to Pa21). In an order entered February 20, 1985, the Court amended its January 4, 1985 order to include a service by mail project commencing April 1, 1985 for civil complaints filed in the Special Civil Part in Bergen County against defendants located in 21 municipalities in that county (Pa22). Finally, the Court, by order entered April 19, 1985, amended the January 4, 1985 order to authorize expanded use of service by mail in the Special Civil Part in Monmouth County by allowing its use for civil actions as of May 1, 1985 (Ra18).

At the time the New Jersey Supreme Court entered its order expanding the Monmouth County project to civil

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* The results for personal service and service by mail in landlord/tenant matters were roughly the same both in terms of time to serve and percentage of defendants served (Ra33 to Ra34). Even so, 89% of defendants were successfully served where mail service was employed, and 90% of all defendants served by mail were served within 13 days.

complaints, eleven individuals were authorized to act as Special Civil Part officers in accordance with appointments by the County Assignment Judge pursuant to New Jersey Court Rules. *N.J. Ct. R.* 1:33-4(e) (Aa38 to Aa39). The officers were authorized to serve summonses, execute warrants, make arrests arising out of civil actions, levy attachments and executions and other writs and orders of the court (Aa37 to Aa38). The officers are nonsalaried, full-time employees. They receive fees based upon the performance of specific duties. They are not on the county payroll and receive no pension benefits and no health care benefits. The positions are not classified positions with civil service status under state law. The officers serve at the pleasure of the Assignment Judge (Aa38 to Aa40).

The expansion of service by mail to service for civil actions led to a determination that service income, and other income from prescribed duties, would be reduced and the employment of eleven officers was not warranted. The resulting level of service and other income, when divided among eleven officers, would reduce the total compensation paid to each officer, with the possibility that the Special Civil Part would lose its officers due to insufficient income. The County Assignment Judge decided to terminate the appointments of four officers based on seniority effective May 1, 1985. Three of the four officers, Jack Spaeth, Sr., Jack Spaeth, Jr., and R. Eugene Glab, are petitioners in this matter.

On April 19, 1985, the New Jersey District Court Association, Inc., the three terminated officers and two litigants in the Monmouth County Special Civil Part instituted this action challenging the New Jersey Supreme Court's January 4, 1985 and February 20, 1985 orders. It was alleged that service by mail contravened the Due Process Clause

of the Fourteenth Amendment to the United States Constitution. It was further maintained that enforcement of the orders would deprive the terminated officers of their positions as process servers. This was said to constitute the deprivation of property rights without due process of law. The petitioners also contended that the orders were beyond the New Jersey Supreme Court's rule-making authority under the State Constitution because a state statute was said to mandate personal service for all actions commenced in the Special Civil Part.

In an opinion entered June 5, 1985, the trial court held that service by mail satisfied the requirements of the Due Process Clause of the Fourteenth Amendment (Pa14 to Pa16). The trial court ruled further that the termination of the employment of the Special Civil Part Officers did not contravene the Due Process Clause because the officers had no property right under state law in continued employment (Pa17 to Pa19). The trial court also held that the orders authorizing service by mail were within the New Jersey Supreme Court's plenary authority under the State Constitution to make rules governing the practice and procedure in the New Jersey courts (Pa13 to Pa14).

Judgment was entered by the trial court in favor of the respondents (Pa7 to Pa8). On appeal, the Appellate Division of the Superior Court affirmed substantially for the reasons stated by the trial court in its June 5, 1985 opinion (Pa5 to Pa6). The Supreme Court of New Jersey refused

to entertain an appeal from the judgment of the Appellate Division (Pa1 to Pa4).*

ARGUMENT

POINT I

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE DECISION OF THE NEW JERSEY SUPERIOR COURT THAT SERVICE BY MAIL DOES NOT CONTRAVENE THE DUE PROCESS CLAUSE IS ENTIRELY IN ACCORD WITH THE APPLICABLE DECISIONS OF THIS COURT AND BECAUSE THERE ARE NO SPECIAL AND IMPORTANT REASONS THAT WOULD WARRANT CONSIDERATION OF THIS ISSUE BY THE COURT.

The Court's rules make plain that review on writ of *certiorari* "is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." *Sup. Ct. R.* 17.1. In support of their application for review, the petitioners maintain that the decision of the New Jersey Appellate Division that service by mail does not violate the Due Process Clause is not in accordance with the decisions of this Court.

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* The petition for a writ of certiorari was initially submitted to the Clerk of this Court on October 14, 1986. It was returned for the correction of certain deficiencies and the corrected version not filed until November 21, 1986. Respondents did not receive the corrected petition until December 24, 1986. This response is filed within 30 days of receipt of the corrected version. *See Sup.Ct. Rule* 22.

Notwithstanding the petitioners' arguments to the contrary, the decision of the New Jersey Superior Court is not in conflict with the applicable determinations of this Court and there are no special and important reasons to justify further review on writ of *certiorari.*

The Court has repeatedly reaffirmed the constitutional adequacy of service by mail. In *Mullane v. Central Hanover Bank and Trust Co.,* 339 *U.S.* 306, 314 (1950), the Court stated that due process requirements are satisfied where the notice procedure employed is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The Court ruled in *Mullane* that where the names and addresses of individuals affected by a proceeding were known, notice by publication was inadequate. There was no reason "for resort to means less likely than the mails to apprise [interested parties] of the action." *Id.* at 318. This was so because the mails are "recognized as an efficient and inexpensive means of communication." *Id.* at 319.

Similarly in *Greene v. Lindsey,* 456 *U.S.* 444 (1982), the Court held that in forcible entry and detainer actions, posting the summons on the door of the premises was a constitutionally inadequate notice procedure. But the Court emphasized:

> . . . Notice by mail in the circumstances of this case would surely go a long way toward providing the constitutionally required assurance that the State has not allowed its power to be invoked against a person who has not had an opportunity to present a defense despite a continuing interest in the resolution of the controversy. . . . [*Id.* at 455].

And in *Mennonite Bd. of Missions v. Adams*, 462 *U.S.* 791, 800 (1983), where the Court held that notice by publication and posting did not provide a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for non-payment of taxes, the Court said that notice by mail "or other means as certain to ensure actual notice" is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interest of any party. *See also Schroeder v. City of New York*, 371 *U.S.* 208, 214 (1962) (In a condemnation action, the City of New York had a constitutional obligation to provide notice, "an obligation which the mailing of a single letter would have discharged."); *Walker v. City of Hutchinson*, 352 *U.S.* 112, 117 (1956) (A letter would have provided constitutionally sufficient notice to a condemnee that his property was about to be taken.); *City of New York v. New York, N.H. and H.R.R.*, 344 *U.S.* 293, 296 (1953) (Mailed notice would be constitutionally adequate for prospective claimants in a railroad reorganization proceeding.)*

The petitioners assert that the New Jersey courts did not apply the *Mullane* standard which petitioners interpret

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* The petitioners cite *Sterling v. Environmental Control Board of New York City*, 793 F.2d 52 (2d Cir. 1986). That case does not support the petitioners. The Court of Appeals held that the City's "nail and mail" procedure for notifying landlords of violations of the City's sanitation code was violative of the Due Process Clause. Mail service was constitutionally inadequate because notices were mailed to buildings where the landlords did not reside. The Court of Appeals made clear, however, that mailed notice would have satisfied the Due Process Clause if the landlords had registered their mailing addresses with the City and if the notices were sent to those addresses.

as requiring the balancing of the need to provide notice with the practical difficulties of doing so (Pb8 to Pb10). While such factors might be relevant to the determination of the constitutional adequacy of a notice procedure, the overriding consideration is the reasonable likelihood that interested parties will be apprised of the pendency of the action by the notice procedure employed. The constitutionality of the notice procedure "must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted." *Greene v. Lindsey, supra,* at 451, quoting from *North Laramie Land Co. v. Hoffman,* 268 *U.S.* 276, 283 (1925).

The courts below correctly applied this principle in concluding, as the Court concluded in *Mullane, Greene* and *Mennonite Bd. of Missions,* that the mails are a means reasonably certain to ensure actual notice to parties whose interests may be affected by a proceeding. The Court's decisions indicate most clearly that the constitutional adequacy of mail service is established as a matter of law. Even were this not the case, the record before the trial court concerning service by mail in the New Jersey Special Civil Part amply supported the conclusion that the mails are reasonably certain to ensure actual notice. In the Passaic Court pilot project over 90% of the defendants were served by mail (Ra24, Ra26). In Burlington County, 87% of the defendants in civil actions, 89% in landlord/tenant matters, and 91% in small claims cases were served by mail (Ra32 to Ra36). In Monmouth County, 98% of the defendants were served by mail (Ra37). Moreover, in none of the three counties was there a marked increase in motions to vacate judgments for lack of service (Ra15). Clearly the New Jersey courts did not err in rejecting the

petitioners' challenge to the New Jersey Supreme Court's orders authorizing service by mail in the Special Civil Part of the Superior Court.

The petitioners suggest that the general rule permits service by mail only for specifically designated types of actions, and that the service of mail program authorized by the Supreme Court of New Jersey for the Special Civil Part could be utilized in a variety of civil cases (Pb8). But whether service by mail is "reasonably calculated under all the circumstances to apprise interested parties of the pendency of an action . . .," *Mullane*, 336 *U.S.* at 314, is not dependent upon the type of action or proceeding in which mail service is employed. Indeed, the Court has never suggested this was so.

The petitioners also maintain that the service by mail program in the Special Civil Part suffers from a constitutional defect because the program allegedly does not have adequate safeguards to protect the due process rights of those affected by the proceedings. The petitioners point to *Fed. R. Civ.P.* 4(c)(ii) as establishing what is said to be constitutionally mandated safeguards (Pb7). The federal rule allows service by first class mail, postage prepaid, and requires resort to personal services unless service is acknowledged on a prescribed form that is returned to the serving party.

The service by mail procedure authorized by the Supreme Court of New Jersey contains safeguards designed to achieve the same goals as the procedures outlined in *Fed. R. Civ.P.* 4(c)(ii). Service is made by regular mail and by certified mail. Signed receipts evidence successful service. Where the receipts are not returned, service may

be deemed effective if the regular mail is not returned. This ensures that an individual may not avoid service by refusing to accept or claim a delivery of certified mail. Finally, the New Jersey court rules prescribe a means of vacating any default judgment that may erroneously be entered by reason of a failure of service. Under New Jersey law, an application to vacate a default judgment is "viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached." *Marder v. Realty Construction Co.*, 84 *N.J. Super.* 313, 319 (App. Div. 1964), aff'd 43 *N.J.* 508 (1964).

It is clear, therefore, that the service by mail program authorized by the Supreme Court of New Jersey for actions commenced in the State's Special Civil Part does not suffer from any constitutional defect. In so holding, the Appellate Division of the Superior Court correctly applied the governing principles from the applicable decisions of this Court. That being so, there are no special and important reasons for further consideration of this issue by the Court.

POINT II

THE DUE PROCESS CLAUSE DOES NOT REQUIRE THAT PETITIONERS JACK SPAETH, SR., JACK SPAETH, JR., AND R. EUGENE GLAB BE AFFORDED AN OPPORTUNITY TO BE HEARD BEFORE THEIR TERMINATION AS SPECIAL CIVIL PART OFFICERS BECAUSE THESE INDIVIDUALS HAD NO PROPERTY INTEREST UNDER STATE LAW IN CONTINUED EMPLOYMENT.

As stated previously, petitioners Jack Spaeth, Sr., Jack Spaeth, Jr., and R. Eugene Glab were Special Civil Part officers in Monmouth County and were terminated

when the service by mail program was expanded in that county. The County Assignment Judge determined that there would be insufficient income to warrant the employment of eleven officers. Four officers were relieved of their duties on the basis of seniority. The New Jersey court ruled that the dismissals did not violate the Due Process Clause, and no decision of this Court calls for a contrary result in this case. Since the lower courts merely applied the well established principles from this Court's decisions, there are no special and important reasons for the Court to hear the case on writ of *certiorari.*

In *Board of Regents v. Roth,* 408 *U.S.* 564 (1972), the Court stated that the Due Process Clause is a safeguard of the security of interests that a person has acquired in specific benefits. The property interests protected by the United States Constitution from deprivation without due process are those created and defined by rules or understandings that derive from State law. *Id.* at 561. *Accord*: *Bishop v. Wood,* 426 *U.S.* 341, 344 (1976), and *Perry v. Sinderman,* 408 *U.S.* 593, 602 (1972).

The New Jersey courts ruled in this case that the petitioners Jack Spaeth, Sr., Jack Spaeth, Jr. and R. Eugene Glab had no property interest under state law to tenure or employment as officers of the Special Civil Part. Petitioners were employed in non-salaried positions. They received fees prescribed for the performance of specific duties. *N.J. Ct. R.* 6:2-3(a). The positions are not classified positions with status under the state's civil service laws. The petitioners were excluded from participation in pension and health care benefits programs. The petitioners were appointed to their positions by the County As-

signment Judge pursuant to a court rule that allows the Assignment Judge to appoint or discharge personnel as deemed necessary. *N.J. Ct. R.* 1:33-4(e) (Aa38 to Aa40).

Although the petitioners assert that under *N.J. Ct. R.* 1:33-4(e) the process servers employed in the Special Civil Part have more than a unilateral expectation of their continued employment as Special Civil Part officers, this interpretation of the rule was rejected by the state courts. It is not the function of this Court to construe the rule contrary to the construction given to it by the state courts. *Hortonville Joint School Dist. No. 1 v. Hortonville Ed. Ass'n*, 426 *U.S.* 482 (1976); *O'Brien v. Skinner*, 414 *U.S.* 524, 531 (1974). Under the rule, as interpreted by the New Jersey Superior Court, the officers serve at the pleasure of the County Assignment Judge (Pa167). The petitioners took their appointments pursuant to the rule and well knew that they faced dismissal according to its terms.

The petitioners nevertheless argue that they have an interest in continued employment grounded in a state administrative regulation, *N.J.A.C.* 4:1-8.14(b) (Pb15). It is said that this regulation outlines the provisions under which process servers are employed. This is not correct. The regulation governs actions taken with regard to positions in the state's civil service, and the officers of the Special Civil Part do not, as the trial court and the Appellate Division ruled in this case, have positions with status under the state's civil service laws (Pa16). In any event, the administrative regulation provides that individuals could be disqualified from public employment in the state's civil service if the individual had "been dismissed from the public service for delinquency or misconduct after

an opportunity for a hearing." Since the petitioners in this case were *not* dismissed for delinquency or misconduct, the rule has absolutely no application to them.

Wholly aside from the absence of any property interest protected by the Due Process Clause, this case is not one where the petitioners were discharged on individualized charges. Here, the New Jersey Supreme Court chose to implement a service by mail program that reduced the income that had previously supported the employment of eleven officers of the Monmouth County Special Civil Part. The County Assignment Judge determined that unless the staff was reduced, the Special Civil Part could lose all of its officers. Four officers were relieved of their duties on grounds of seniority.

Since the petitioners do not challenge the particular facts concerning the reduction in income or their seniority, it is plain that they are asserting a challenge to the general policy determination of the Supreme Court of New Jersey to expand the service by mail program in Monmouth County. But the protections of the Due Process Clause do not extend to the indirect effects of governmental action. *O'Bannon v. Town Court Nursing Center*, 447 *U.S.* 773, 789 (1980). The protections against deprivation without due process of law do not extend to "consequential injuries resulting from the exercise of lawful power." *Id.*, quoting from *Legal Tender Cases*, 12 Wall. 457, 551 (1871).

The petitioners additionally cite the Court's decision in *Schware v. Board of Bar Examiners*, 353 *U.S.* 232 (1957), for the proposition that a State may not, in regulating eligibility for professional employment, foreclose a range of employment opportunities without a full prior

hearing (Pb15). In *Schware,* the Court ruled that a state could not exclude a person from the practice of law or any other occupation in a manner or for reasons that contravene the Due Process Clause. *Id.* at 328-329. The issue in the case was whether certain qualifications for admission to the bar were rationally related to an individual's fitness or capacity to practice law. *Id.* at 239.

The Court's decision in *Schware* is distinguishable from this matter. This case does not concern the qualifications to serve as officers of the New Jersey Superior Court. Nor does this case involve a situation where individuals have been completely foreclosed from employment opportunities in the New Jersey court system or otherwise. The issue in this matter is whether the petitioners, terminated by seniority as officers of the Special Civil Part due to insufficient workload, were entitled to a hearing prior to termination, where the petitioners had no right or expectation to continued employment under state law. That issue was not considered by the *Schware* Court.

The courts below correctly applied the well established principles from this Court's decisions in rejecting the petitioners' assertions that they could not be terminated without an opportunity for a hearing. As indicated in *Roth,* the property interests protected from deprivation without due process of law are those grounded in state law. Here, the New Jersey courts found that, as a matter of state law, the petitioners had no protected property interest in continued employment. Therefore, the termination of the petitioners without an opportunity for hearing did not contravene the Due Process Clause.

POINT III

THE SUPREME COURT OF THE UNITED STATES DOES NOT HAVE JURISDICTION TO CONSIDER PETITIONERS' CONTENTION THAT THE STATE COURT ERRED IN HOLDING THAT A NEW JERSEY STATUTE DOES NOT REQUIRE PERSONAL SERVICE IN ACTIONS COMMENCED IN THE SPECIAL CIVIL PART.

The petitioners in this case challenged the New Jersey Supreme Court's orders authorizing service by mail on the grounds that state Supreme Court did not have the authority under the New Jersey Constitution to permit the use of mail service in the face of a state statute purportedly requiring personal service. The Appellate Division of the Superior Court affirmed the trial court's finding that the orders were within the Supreme Court's plenary power under the New Jersey Constitution to make rules governing practice and procedure in the state courts. *See N.J. Const.* (1947), *Art.* VI, § 2, par. 3, The Appellate Division also ruled that service of process was a matter of practice and procedure (Pa11 to Pa14). Thus, even if a state statute was in conflict with the Supreme Court's January 20, 1985 and February 4, 1985 orders, the orders superseded the legislation (Pa14). The petitioners seek the issuance of a writ of *certiorari* to determine whether the New Jersey courts "erroneously interpreted state decisional law" in rejecting their statutory challenge to the state Supreme Court's orders (Pb11 to Pb13).

The petitioners argued in the New Jersey courts that *N.J. Stat. Ann.* 2A:18-5 mandates personal service in the

Special Civil Part.* However, the history of the statute reveals that the statute does not and never was intended to address the *manner* of service of a summons. It merely identified those who would undertake service if service was made personally. Even if the statute were read as mandating personal service, it was in conflict with a supervening order by the Supreme Court of New Jersey.

Under the state's Constitution, the Court has plenary authority to make rules governing practice and procedure in the state's courts. *N.J. Const.* (1947), *Art.* VI, § 2, par. 3. It is well established in New Jersey that an order of the Supreme Court overrides any conflicting statute on a matter of practice and procedure. *Winberry v. Salisbury,* 5 *N.J.* 240, 255, 74 *A.*2d 406, 414 *cert.* den. 340 *U.S.* 877 (1950); *George Siegler Co. v. Norton,* 8 *N.J.* 374, 281-381, 86 *A.*2d 8, 12 (1952). It is also established under New Jersey law that service of process is a matter of practice and procedure. *Feuchtbaum v. Constontini,* 59 *N.J.* 167, 280 *A.*2d 161 (1971).

The petitioners have invoked 28 *U.S.C.* § 1257(2) and (3) as grounds for the exercise of jurisdiction in this matter. The petitioners request the Court to consider whether the Appellate Division of the New Jersey Superior Court erred in its interpretation and application of the

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* The statute provides that:

> All process issued out of a county district court shall be served only by the sergeant-at-arms of the court or such officer as shall be especially designated by the judge, or in courts having branch parts, of the court.

The statute was not repealed when the County District Courts were abolished but reference therein to the County District Courts "shall be given effect as though the reference [was] to the Superior Court. . . ." *L.* 1985, *c.* 405, § 4.

state Constitution and the controlling decisions of the New Jersey Supreme Court. However, under 28 *U.S.C.* 1257, the Court is only authorized to review final judgments of state courts by appeal or by writ of *certiorari* where a statute is challenged on the ground that it is repugnant to the Constitution, treaties or laws of the United States. Obviously, the Court's jurisdiction under 28 *U.S.C.* § 1257 does not extend to the consideration of claims that state courts erroneously interpreted state law. *See Brinkerhoff-Faris Trust and Savings Co. v. Hill,* 281 *U.S.* 673, 680 (1930). As the Court has made clear, the construction of state laws is the *exclusive* responsibility of the state courts. *Speiser v. Randall,* 357 *U.S.* 513, 524 n.14, reh. den. 358 *U.S.* 860 (1958). It is not within this Court's authority to consider the state law issue posed in the petition for a writ of *certiorari.* Therefore, the petition for review on writ of *certiorari* should be denied.

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CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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